IN THE HIGH COURTOF PUNJAB AND HARYANA, CHANDIGARH.

ITA No..81 of 2006
Date of decision:11.12.2006

Commissioner of Income Tax, Faridabad

....Appellant.

vs.

M/s Lakhani Rubber Udyog Ltd, Faridabad.

..Respondent

CORAM: HON'BLE MR.JUSTI CE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE J.S.NARANG.

Present: Mr. Yogesh Putney, Advocate, for the appellant.

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J.S.NARANG,J.

This judgment would dispose of two I.T.A Nos.81 and 82 of 2006, as common question of law and facts are involved in both these appeals. Facts are being taken from I.T.A. No.81 of 2006.

The instant appeal has been filed by proposing the following questions of law for consideration:-

(a) Whether on the facts and in the circumstances of the case the Hon'ble ITAT erred in law in confirming the order of the CIT (A) in holding that the profit of the business eligible for deduction under Section 32AB of the Act would not get reduced on allowing deduction of expenditure on scientific research under section 35 ?

(b) Whether on the facts and in the circumstances of the case the Hon'ble ITAT erred in law in confirming the order of the CIT (A) in holding, that the order was wrongly passed by the Assessing Officer u/s154 of the Act as there was no mistake apparent from record ?

The brief facts need to be noticed are that the assessee filed return of income on 29.7.1988 declaring income of Rs.17,34,554/-. The assessment had been finalised by the Assessing Officer vide order dated March 11, 1992, for the assessment year 1988-89. The assessee had made a claim of Rs. 27,61,348/- under Section 35 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The total cost of assests on account of scientific research has been given as Rs.36,57,523/-. The total cost of land and depreciation thereon have been quantified as Rs.1,50, 350/- and Rs.7,45,825/- respectively. The net claim of Rs.27,61,348/-, has been made. A reference had been made to the Prescribed Authority. The report had not been received and that the assessment was getting barred by limitation as on 31.3.1992. Thus, the report was not awaited and the the assessment was finalised. The deduction under Section 32 AB of the Act i.e. 1/5th of the amount so determined had been allowed.

By order dated March 10, 1998, the deduction under Section 32-AB of the Act, was held to be in excess and that the same was rectified vide the aforesaid order.

The assessee challenged the aforesaid order by way of an appeal before the Commissioner of Income Tax (Appeals), which was allowed vide order dated October 10, 2001 and that the deduction under

Section 32 AB of the Act, had been allowed.

The revenue felt aggrieved of the aforesaid order and challenged the same by way of an appeal before the Income Tax Appellate Tribunal, Delhi Bench, New Delhi. The appeal has been dismissed vide order dated June 27, 2005, which has been questioned in the instant appeal by way of proposing the aforesaid questions of law.

The question considered by the Tribunal is: Whether as per the provisions of Section 32 AB of the Act, the profits of the business eligible for deduction under the said provision would get reduced on allowing deduction of expenditure on scientific research under Section 35 of the Act ? It has been interpreted that as per Section 32 AB (3) "profits of the business or profession" for the purpose of Section 32 AB (1) of the Act, would be an amount arrived at after deducting an amount equal to the depreciation computed according to the requirements of Part II and Part III of Schedule VI of the Companies Act, 1956. It is obvious that there is no mention of Section 35 of the Act in the provision contained under Section 32AB of the Act. Thus, it would not be correct to say that on allowing deduction of expenditure on scientific research under Section 35, the profits of the business eligible for deduction under Section 32 AB would get reduced. Resultantly, the Tribunal has held that the order under Section 154 of the Act, had been wrongly passed by the Assessing Officer. The order of the Commissioner of Income Tax (Appeals) has been upheld.

Learned counsel for the appellant has not been able to address any meaningful argument to controvert the view taken by the Commissioner of Income Tax (Appeals), which has been further affirmed by the Tribunal. The contention is that it is a case of simple accountancy;

once the Assessing officer allowed deduction under section 35, the profits of business or profession of the assessee got reduced, simultaneously reducing the eligible profits for the purpose of Section 32 AB of the Act, would not be sustainable. Thus, deduction under Section 32 AB of the Act entailed re-computation on the basis of allowing deduction under Section 35. Thus, the excess deduction would not be sustainable.

We find that the argument is totally fallacious and is not sustainable. We do not find any infirmity in the order dated October 10, 2001, passed by the learned Commissioner of Income Tax (Appeals), which has been further affirmed by the Tribunal by making a categoric observation that the profits of the business or profession shall be an amount equal to the depreciation computed according to the requirements of Parts II and Part III of Schedule VI of the Companies Act, 1956. No question of law arises for consideration of this Court.

Dismissed.

(VIJENDER JAIN) ***(J.S.NARANG)***
CHIEF JUSTICE ***JUDGE***

December 11, 2006
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